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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

Z.B., a minor, and J.B., a minor, by
their guardian, S.S., and S.S., an
individual,

Plaintiffs,

vs.

DELTA AIR LINES, INC.,
BRIAN PATRICK DURNING,
and DOES 1 through 5, inclusive,

Defendants.

Case No. 2:24-cv-02178-FLA (DFMx)

**DECLARATION OF JESSICA R.
LOBIS BUCKWALTER IN SUPPORT
OF PLAINTIFFS' RESPONSE TO
THE COURT'S ORDER TO SHOW
CAUSE WHY ACTION SHOULD
NOT BE REMANDED FOR LACK OF
SUBJECT MATTER JURISDICTION**

DECLARATION OF JESSICA R. LOBIS BUCKWALTER

I, Jessica R. Lobis Buckwalter, declare as follows:

1. I am an attorney, duly licensed to practice law in the State of California and am a member in good standing of the bar of the State of California and of this Court. I am a partner with the law firm of Lewis Baach Kaufmann Middlemiss PLLC, counsel of record for Plaintiffs Z.B., J.B., and S.S. (“Plaintiffs”) in this action. The facts stated herein are within my personal knowledge and if called upon to testify, I can truthfully and competently do so as to all matters herein.

2. I make this declaration in support of Plaintiffs Response to the Court’s March 26, 2024, Order To Show Cause Why Action Should Not Be Remanded For Lack of Subject Matter Jurisdiction.

3. On January 30, 2024, Plaintiffs commenced the instant action in Los Angeles Superior Court against Delta Air Lines, Inc. (“Delta”), Brian Patrick Durning (“Durning”), and Does 1 through 5 for claims of (1) Intentional Infliction of Emotional Distress; (2) Gross Negligence; (3) Negligence; (4) Negligent Infliction of Emotional Distress; (5) Violation of Business and Professions Code § 17200; (6) Assault; (7) Sexual Battery (Civil Code § 1708.5); (8) Battery; and (9) Intentional Infliction of Emotional Distress. The Case Number assigned to the case was 24TRCV00333.

4. On February 16, 2024, the Los Angeles Superior Court for the State of California issued the Summons for Defendants Delta and Brian Patrick Durning. Delta was served with a copy of the Complaint and Summons on February 20, 2024. A true and correct copy of the Proof of Service on Delta is attached hereto as **Exhibit “1.”**

5. On February 20, 2024, my firm used the Federal Bureau of Prisons inmate locator (<https://www.bop.gov/inmateloc/>) to locate Durning. According to that database, Durning was incarcerated at the FCI Petersburg Medium security correctional facility in Prince George, Virginia (“FCI Petersburg”).

1 6. Several attempts were made to contact FCI Petersburg to determine the
2 procedure for serving an inmate incarcerated at the facility. On February 23, 2024,
3 I learned that FCI Petersburg required that service be made through the use of the
4 Sheriff's Office. That same day, my firm engaged Capitol Process Services, Inc.
5 ("Capitol Process") and requested that they transmit the Summons and Complaint
6 to the local Sheriff's Office in Prince George, Virginia, for service on Durning.

7 7. On March 1, 2024, the Sheriff's Department for Prince George County
8 of Virginia attempted to serve Durning with the Complaint and Summons but were
9 unable to do so because Durning had been moved to a different facility. A true and
10 correct copy of Proof of Non-Service is attached hereto as **Exhibit "2."** The Proof
11 of Non-Service is stamped: "RECEIVED PRINCE GEORGE SHERIFF'S DEPT.
12 FEB 27 2024."

13 8. On March 5, 2024 I learned that, according to the Bureau of Prison
14 website, Durning was moved to and located at the FCI Fort Dix correctional facility
15 in Fort Dix, New Jersey ("FCI Fort Dix"). FCI Fort Dix required that service be
16 made through the use of the Sheriff's Office and Capitol Process was instructed to
17 follow the FCI Fort Dix service requirements for serving Durning with the
18 Summons and Complaint.

19 9. On March 6, 2024, Capitol Process transmitted the documents for
20 service to the Sheriff's office in New Jersey. My firm was told that the Sheriff's
21 Office makes attempts for service at FCI Fort Dix once or twice a month.

22 10. On March 20, 2024, Durning was served with the Complaint and the
23 Summons issued by the Los Angeles Superior Court for the State of California. The
24 Proof of Service is stamped: "RECEIVED BURLINGTON COUNTRY SHERIFF
25 2024 MAR-7 A 10:10." A true and correct copy of the Proof of Service on Durning
26 is attached hereto as **Exhibit "3."**

27 11. On March 29, 2024, the Complaint and federal Summons for Durning
28 were sent to Capitol Process and they were instructed to transmit the documents to

1 the Sheriff's Office in Burlington County, New Jersey, and request that they be
2 served on Durning at FCI Fort Dix. It is my understanding that a deputy from the
3 Burlington County Sheriff's Office will likely go to FCI Fort Dix the week of April
4 22, 2024 or April 29, 2024 and attempt to serve Durning.

5 12. On March 28, 2024, I received an email from Delta's counsel asking if
6 Plaintiffs would stipulate that the amount in controversy does not exceed the
7 jurisdictional threshold of \$75,000. I advised Delta's counsel that Plaintiffs declined
8 to enter into a stipulation.

9
10 I declare under penalty of perjury under the laws of the United States of
11 America that the foregoing is true and correct.

12 Executed this 9th day of April 2024 in the District of Columbia.

13
14 /s/ Jessica R. Lobis Buckwalter

15 Jessica R. Lobis Buckwalter
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